



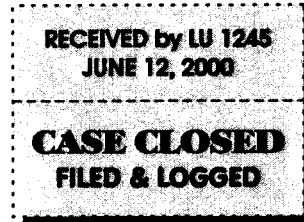
REVIEW COMMITTEE



PACIFIC GAS AND ELECTRIC COMPANY
2850 SHADELANDS DRIVE, SUITE 100
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(925) 974-4123

MARGARET A. SHORT, CHAIRMAN

DECISION
LETTER DECISION
PRE-REVIEW REFERRAL



INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
P.O. BOX 4790
WALNUT CREEK, CALIFORNIA 94596
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BOB CHOATE, SECRETARY

VP Power Generation Grievance No. 861-99-014
Review Committee Decision No. 10863

Steve Lorence
Company Member
Local Investigating Committee

Dan Lockwood
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the discharge of a Traveling Mechanical Utility Worker from Diablo Canyon Power Plant.

Facts of the Case

The grievant had twelve years of service. He was discharged for failure to notify the Company in the manner prescribed for him, that is, to notify the Director General Services in San Luis Obispo any time he was to be off work. On Friday, May 28, 1999 the grievant asked the lead of his crew, a Traveling Mechanic Rigger, a temporarily upgraded Mechanical Utility Worker, for the afternoon on vacation. The temporary Rigger who was unaware of the grievant's notice requirements allowed the grievant to take the vacation. When the regular lead (also a temporarily upgraded Helper to Mechanic-Rigger returned) from vacation, she noticed the grievant had been on vacation and informed the Director.

At the time of discharge, the grievant had been on an active Decision Making Leave (DML) for four months. The DML was given for falsifying the time records by indicating a three day absence for jury duty. Documentation from the Jury Services Supervisor showed the grievant was required to call in on the first two days and appear on the third day. The jury services record indicates he did not appear on the third day. In addition, the DML admonished the grievant for failure to provide the mandatory six hour notice prior to not reporting to work on January 8 and 13, 1999. The DML was grieved and upheld.

Subsequent to the DML, the grievant was coached and counseled three times (February 8, March 17, and March 18) for failure to notify the Director of absences prior to taking off and he was coached and given a letter for an instance of sick leave abuse. On February 8, the grievant called in sick but not to the Director or the lead. The Director instructed the lead to contact the grievant and have him call the Director. The Director talked to the grievant by telephone that day. They had some conversation about notice expectations. This conversation was confirmed in an e-mail to the grievant dated February 8 that also included the director's work and home phone numbers. In a subsequent e-mail dated March 17, the Director told the grievant: "Anytime you are unable to come to work due to illness or any other reason, or you are at work and need to leave due to illness or any other reason, you are to call me personally."

The sick leave abuse occurred March 17, 1999 about six weeks after the DML. The grievant left work indicating he was sick. This was another instance when the grievant did not contact the Director as instructed. The grievant was later observed at a ball game at his son's school. On April 2, the grievant was given a sick leave abuse letter docking him for three hours pay and recording it as time off without permission without pay. In addition on March 17, the Director sent another email to the grievant to reiterate the requirement to call him for permission to be off. The email stated: "Any time you are unable to come to work due to illness or any other reason or you are at work and need to leave due to illness or any other reason, you are to call me personally."

On the following day, March 18, the Director was notified that the grievant had left a note for the lead that he was taking a Floating Holiday. Again, the grievant did not request permission from the Director. The Director called the grievant at home left a message on the recorder for the grievant to contact him. When the grievant called, the Director again told the grievant that he "wanted him to contact me anytime he was not going to be at work for any reason or anytime he was going to leave work ahead of his normal release time."

Discussion

The Union expressed concern that the Director's instructions may not have initially been clear to the grievant that he was to request permission from the Director for all absences. Of more concern to the Union was that none of the verbal or written contacts after the DML reminded the grievant of his DML status and the consequence or condition precedent of termination for continued failure to follow the notice procedure of contacting the Director; nor was a Shop Steward offered in any of the contacts. The Union expressed that the Positive Discipline principles of face-to-face contact were not being adhered to.

Company opined that the email of February 8 was very clear and that a prudent person on a DML would take extra precaution and notify the Director even if unsure if it was required. However, the grievant kept testing and each time the Director tried to be more clear about his expectations. As to the offer of a Shop Steward, Company policy is to offer one when conducting an investigatory interview that

could lead to discipline. Under Weingarten, an employer is required to provide a Shop Steward at the request of an employee who has a reasonable belief that the investigatory meeting may lead to discipline. In this case, there was no request by the employee for a Shop Steward, if there had been, one would have been provided whether legally required to do so or not as that is also Company policy.

The Review Committee agreed that the grievant's behavior in this case, was considered insubordination. The rule was clear enough that a review of the grievant's actions can only be interpreted as resorting to self help and a refusal to notify the Director as required. Further, the Review Committee noted the very serious sick leave abuse event which is another example of falsification, which was the reason for the DML. But for the contract language of Section 112.8 and Arbitration Case No. 84 which allow for one "bite of the apple", this event would have resulted in discharge.

Further, the Review Committee agreed that coaching and counseling sessions, as well as, disciplinary action under Positive Discipline shall be conducted face-to-face in private. Letter Agreement 87-189 states: "Employees will be entitled to Union Representation at any phase of Positive Discipline including coaching and counseling."

Decision

The Review Committee agreed that this discharge was for just and sufficient cause. This case is considered closed.

For the Company:

Margaret A. Short
Ernie Boutte
Dave Morris
Malia Wolf

For the Union:

Bob Choate
William R. Bouzek
Ed Dwyer
Sherrick A. Slattery

By: Margaret Short
Date: 6/9/00

By: Bob Choate
Date: 6/9/00